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C O N F I D E N T I A L SECTION 01 OF 02 ABUJA 001679

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COMMERCE FOR ADVOCACY CENTER

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SUBJECT: NIGERIA: MOTOROLA'S BID FOR GSM EQUIPMENT

CONTRACT: AMBASSADOR DISCUSSES COMMERCIAL ADVOCACY CASES
WITH VICE PRESIDENT ABUBAKAR

Summary

11. (SBU) Summary. Following up from his meeting with Motorola representatives on July 9 (following septel from Lagos), Ambassador Jeter met the Principal Secretary to President Obasanjo, Stephen Oronsaye, on July 10 and with Vice President Atiku Abubakar on July 11. The Vice President confirmed that the technical evaluation committee had recommended the Motorola bid because it was better qualified on all aspects including price, project financing, technical qualifications, and delivery time. However, the Vice President said, alleged improprieties between Motorola and Director-General Nasir El-Rufai, who chaired the Financial Restructuring Committee, invalidated the evaluation committee's recommendation and caused the President to decide in favor of Ericsson. Both Motorola and Nasir El-Rufai dispute these allegations and claim they are completely unfounded. El-Rufai is threatening to take the issue to court. End Summary.

Background

12. (SBU) In May 2001, the GON established the Financial Restructuring Committee (FRC) mandated with refinancing NITEL debts and seeking long-term financing for the GSM roll-out and transmission network expansion. To conduct the actual tendering process, the FRC established a five-man technical committee comprised of representatives from NITEL (state-owned telecommunications monopoly) and the Bureau of Public Enterprises. There were two rounds of bidding and a third round of reassessment to include prices for all omitted items according to standard World Bank methodology. After the final reassessment, the evaluation committee submitted its report, which recommended Motorola be awarded the contract, to the President and Vice President for the final decision.

13. (SBU) On July 5, Embassy advocacy assistance was requested on behalf of Motorola in its USD 39.3 million bid for the NITEL GSM equipment contract. The other companies competing for the bid are Swedish company Ericsson whose final bid was USD 49 million and Shangai Bell of China bidding USD 39 million. On July 6, the Department of Commerce informed the Embassy that Ericsson, not Motorola, had been awarded the contract. End Background.

14. (C) On July 10, Ambassador Jeter met with the Principal Secretary to the President Stephen Oronsaye and, on July 11,

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with Vice President Atiku Abubakar to discuss Motorola's bid for the GSM equipment contract. In the meeting with Oronsaye, Ambassador Jeter emphasized that it was hard to understand how Ericsson could have won the bid given Motorola's lower bid price, best technical specifications, and fastest delivery time. While Oronsaye was not clear on all the details of the tendering, he was comfortable that the decisions made were in line with the desired transparency and integrity of the process. Oronsaye did mention a possible conflict of interest between Bureau of Public Enterprises Director-General Nasir El-Rufai, who chaired the Financial Restructuring Committee, and Motorola. This point was further elaborated on by the Vice President.

15. (C) From the outset of the July 11 meeting, the Vice President made it clear that he felt no obligation to explain the reasons behind the Presidency's decision to award the contract to Ericsson, but that he would explain in the interest of transparency and fairness. In considering the contract award, the Vice President said, he and the President

looked at the credibility of the exercise, the petitions and their desire for Western technology. Based on these considerations they decided to offer the bid to Ericsson. Vice President Abubakar confirmed that Ericsson had been awarded the contract under the condition that it deliver the services at Motorola's lower bid price and within 4 months, not 5 months as it had proposed.

16. (C) The determining factor in the decision in favor of Ericsson appeared to be allegations, brought forth by Ericsson, against Motorola. Vice President Abubakar commented that he had received two petitions from Ericsson that alleged Nasir El-Rufai was biased in favor of Motorola and questioned the validity of the tendering exercise. Specifically, Ericsson complained that El-Rufai had a conflict of interest because he had worked for Motorola in the past. The Vice President also said that the petition claimed that El-Rufai's elder brother was a 10 percent-shareholder in Motorola. According to the Vice President, El-Rufai's failure to respond to these petitions in a timely fashion led the Presidency to award the contract to Ericsson.

17. (SBU) Motorola Regional Sales Director Karen Johanson, who was in Nigeria seeking resolution of these issues, disputed Ericsson's allegations on July 12. Johanson asserted that El-Rufai's brother does not hold Motorola stock, although he is part-owner of Intercellular Nigeria Ltd., a small fixed wireless company in Lagos that distributes Motorola equipment. She said that although El-Rufai worked for Motorola for two years prior to his GON employment, he did not offer assistance to Motorola during the tendering process, "squeezing us just as much as the other companies."

18. (C) Ambassador Jeter asked the Vice President hypothetically that even if El-Rufai were biased toward Motorola, given the technical committee's unanimous vote in favor of Motorola, how much influence could one man truly have on such a diverse collection of officials. The Vice President argued that if you know El-Rufai personally, you would know that "he could sway an entire crowd to agree with him on almost any issue." (Comment. Since the meeting, Embassy has received a copy of El-Rufai's written reply to the President regarding Ericsson's allegations. His letter clarifies that he was not, in fact, on the evaluation committee itself, but rather the chairman of the Financial Restructuring Committee that oversaw the three evaluation committees established for three separate contracts of which the GSM equipment contract was one. End Comment.)

19. (C) The Ambassador then raised the concern that, in light of irregularities surrounding Ocean Energy's and ABB Lummis' bid for government contracts, the GON's decision to go against the technical committee's recommendation would create the perception that the tendering process in Nigeria is not transparent, and, in fact, would be construed as a bias against companies from the United States. Ambassador Jeter stressed to the Vice President how critical it is that the GON avoid sending a signal to U.S. companies that Nigeria is not a friendly place to conduct business. The Vice President responded that he also is anxious not to create the impression that U.S. business investment is unwelcome in Nigeria. As a compromise approach, Ambassador Jeter suggested that the contract be split regionally with Motorola providing equipment for the southern half of the country and Ericsson for the northern half. The Vice President did not respond directly, but left the idea on the table for further consideration.

10. (C) Vice President Abubakar claimed that the Minister of Communications had signed the contract with Ericsson on July 10. However, as of July 16, Motorola Nigeria representative Raphael Udeogu asserted that although the Minister had signed two related contracts with Siemens and Alcatel, the contract with Ericsson had not yet been signed. Udeogu reported that Ericsson had not yet responded to the GON's contract offer at Motorola's significantly lower bid price of USD 39.3 million as compared with Ericsson's bid of USD 49 million.

11. (C) Comment. The fact that the President and Vice President would believe allegations of corruption brought to bear by Motorola's competitor without verifying their accuracy leaves us questioning the efficacy and transparency of the tendering process. Nasir El-Rufai is a close Embassy contact and has a reputation for honesty, fairness and transparency, particularly in his official capacity as overseer of the GON privatization program. The Vice President's claim that El-Rufai could have easily influenced the technical committee's evaluation seemed to ignore the fact that El-Rufai himself was not on the technical

committee. Moreover, in his letter to the President, El-Rufai strongly refuted Ericsson's allegations. He also described the involvement of the Vice President's Aide-de-Campe who, El-Rufai says, attempted to influence the Vice President and him in favor of Ericsson. The Embassy is unable to verify the accuracy of these statements.

12. (C) Comment Continued. Ambassador Jeter will send letter to President Obasanjo this week forwarding a Motorola statement addressing Ericsson's allegations of impropriety. The letter will request that the President reconsider Motorola's disqualification, which we believe was based on erroneous information. Post will continue to advocate on behalf of Motorola. End Comment.
Jeter